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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-09-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

L.P.A.NO.18 OF 2003
AND
C.M.P.NO.1362 of 2003 & M.P.NO.1 OF 2006
AND
CROSS OBJECTION SR.NO.66981 OF 2006

LPA.NO.18 of 2003

Oriental Insurance Company Ltd.,
38, Anna Salai,
Chennai 600 002. .. Appellant in LPA.No.18/03 and 1st Respondent in Cross Objection SR No. 66981/06

Vs.

1. Dhanabackiam
   W/o. Kuppan

2. Kuppan,
   S/o. Thanthoni

3. Kesavan,
   S/o. Srinivasan .. Respondents in LPA.No.18/03 and Cross Objection SR in LPA.No.18/03 and 2nd Respondent in Cross Objection SR No. 66981/06

3rd Respondent herein was the first respondent before the trial court and in CMA and he remained exparte in both proceedings Hence the summons to the 3rd Respondent may be dispensed with.

Appeal filed against the judgment dated 20.3.2002 made in C.M.A.No.42 of 2001 passed by the learned single Judge modifying the judgment dated 15.2.2000 made in MCOP.No.289 of 1993, on the file of Motor Accident Claims Tribunal (Principal Sub Judge), Chengalpattu.

For Appellant : Mr.S. Manohar
& R1 in Cross Objn.

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For Respondents 1&2 : Mr.M.M. Sundaram for
& Cross Objectors Mr.T. Mohan

- - -

COMMON JUDGMENT

P.K. MISRA, J

The Insurer has filed this appeal against the decision of the learned single Judge in C.M.A.No.42 of 2001. Such C.M.A., filed by the claimants was directed against the award dated 15.2.2000 in MCOP.No.289 of 1993. The claim application was filed by the parents of the deceased.

2. On 28.8.1992, the son of the claimants was travelling in a lorry bearing Registration No.TN-31-W-0149 belonging to present Respondent No.2. Such vehicle was insured with the present appellant. The claimants, who filed the claim application, claimed Rs.2,00,000/- as compensation. The owner remained ex parte. The contention of the Insurance Company was that the deceased was travelling in the lorry and was an unauthorised passenger and, therefore, the Insurance Company is not liable to pay compensation to the claimants. The Tribunal held that a sum of Rs.66,000/- was payable as compensation to the parents of the deceased. The Tribunal by relying upon the decision reported in 1999 ACJ 1 (MALLAWWA (Smt) AND OTHERS v. ORIENTAL INSURANCE COMPANY LIMITED AND OTHERS) held that such amount was payable by the owner and the Insurance Company was not liable to pay such amount as the person was carried in a goods vehicle, which was not authorised. Thereafter, the appeal was filed by the claimants claiming higher compensation. It was also contended that the Insurance Company should pay compensation. Learned single Judge while confirming the award of the Tribunal relating to quantum payable, relying upon the decision of the Supreme Court in AIR 2000 SC 235 (NEW INDIA ASSURANCE COMPANY v. SATPAL SINGH AND OTHERS), held that the owner as well as the Insurance Company were jointly and severally liable to pay the compensation of Rs.66,000/- with interest at 12% from the date of application till the date of payment. Accordingly the award of the Tribunal was modified by the learned single Judge to the above extent. Thereafter the present appeal has been filed by the Insurance Company.

3. The only contention raised by the Insurance Company is to the effect that the deceased was travelling in the lorry as a passenger which is not permitted and as such there was violation of the Policy conditions and, therefore, the Insurance Company is not liable.

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4. Since the owner had remained ex-parte before the Tribunal, notice on the owner had been initially dispensed in the present appeal. Subsequently, however, notice has been issued to the owner and thereafter notice has been published in the newspaper. The owner has not appeared.

5. The claimants / respondents have subsequently filed Cross Objection claiming higher compensation.

6. In view of the contentions raised in the appeal and the cross-objection, the following two questions arise for determination :-

(1) Whether the cross-objection can be allowed and the compensation awarded is required to be enhanced ?

(2) Whether the Insurance Company is liable to pay compensation ?

7. It is convenient to consider the question of liability of the Insurance Company first because the question of maintainability of the Cross Objection is dependant upon such question.

8. The Tribunal has relied upon the decision of the Supreme Court reported in 1999 ACJ 1 (cited supra) to come to the conclusion that the Insurance Company is not liable in respect of the liability of a passenger travelling in a goods vehicle. Learned single Judge has, however, relied upon the decision of the Supreme Court in AIR 2000 SC 235 (cited supra). This later decision of the Supreme Court in Satpal Singh case has been subsequently over-ruled in 2002(8) Supreme 594 = (2003) 2 SCC 223 (NEW INDIA ASSURANCE CO. LTD., v. ASHA RANI & OTHERS). The question raised in Satpal Singh case was specifically referred to a larger Bench and that is how the matter came before the larger Bench in 2002(8) Supreme 594. After referring to the relevant provisions contained in the Motor Vehicles Act, 1988, before such Act was amended, and the Motor Vehicles Act, 1939, the Supreme Court observed as follows:-

> "10. In Satpal's case (supra) the Court assumed that the provisions of Section 95(1) of Motor Vehicles Act 1939 are identical with Section 147(1) of the Motor Vehicles Act 1988, as it stood prior to its amendment. But a careful scrutiny of the provisions would make it clear that prior to the amendment of 1994 it was not necessary for the insurer to insure against the owner of the goods or his authorised representative being carried in a goods vehicle. On an erroneous impression this Court came to the conclusion that the insurer would be liable to pay compensation in respect of the death or bodily injury caused to either the owner of

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the goods or his authorised representative when being carried in a goods vehicle the accident occurred. If the Motor Vehicles Amended Act of 1994 is examined, particularly Section 46 of Act 6 of 1991 by which expression 'injury to any person' in the original Act stood substituted by the expression 'injury to any person including owner of the goods or his authorised representative carried in the vehicle' the conclusion is irresistible that prior to the aforesaid amendment Act of 1994, even if widest interpretation is given to the expression 'to any person' it will not cover either the owner of the goods or his authorised representative being carried in the vehicle. The objects and reasons of clause 46 also states that it seeks to amend Section 147 to include owner of the goods or his authorised representative carried in the vehicle for the purposes of liability under the Insurance Policy. It is no doubt true that sometimes the legislature amends the law by way of amplification and clarification of an inherent position which is there in the statute, but a plain meaning being given to the words used in the statute, as it stood prior to its amendment of 1994, and as it stands subsequent to its amendment in 1994 and bearing in mind the objects and reasons engrafted in the amended provisions referred to earlier, it is difficult for us to construe that the expression 'including owner of the goods or his authorised representative carried in the vehicle' which was added to the pre-existed expression 'injury to any person' is either clarificatory or amplification of the pre-existing statute. On the other hand it clearly demonstrates that the legislature wanted to bring within the sweep of Section 147 and making it compulsory for the insurer to insure even in case of a goods vehicle, the owner of the goods or his authorised representative being carried in a goods vehicle when the vehicle met with an accident and the owner of the goods or his representative either dies or suffers bodily injury. The judgment of this Court in Satpal's case, therefore must be held to have not been correctly decided and the impugned judgment of the Tribunal as well as that of the High Court accordingly are set aside and these appeals are allowed. It is held that the insurer will not be liable for paying compensation to the owner of goods or his authorised representative on being carried in a goods vehicle when that vehicle meets with an accident and the owner of goods or his representative dies or suffers any bodily injury."

9. The decision of the Supreme Court in Asha Rani's case has been subsequently followed in (2003) 2 SCC 339 (ORIENTAL INSURANCE CO. LTD., v. DEVIREDDY KONDA REDDY) and

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(2003) 9 SCC 668 (NATIONAL INSURANCE CO. LTD., v. AJIT KUMAR). All these decisions were again followed in (2004) 2 SCC 1 (NATIONAL INSURANCE CO. LTD v. BALJIT KAUR AND OTHERS), where it was observed :-

> "21. The upshot of the aforementioned discussions is that instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh. The said decision has been overruled only in Asha Rani. We, therefore, are of the opinion that the interest of justice will be subserved if the appellant herein is directed to satisfy the awarded amount in favour of the claimant, if not already satisfied, and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for the insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988 in terms whereof, it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of vehicle involved in the accident inasmuch as can be resolved by the Tribunal in such a proceeding."

10. A Division Bench of this Court in the decision reported in 2006(1) MLJ 154 (M/s. UNITED INSURANCE CO. LTD., AND ANOTHER v. SELVAM AND OTHERS), after referring to all such decisions, has observed that, while the Insurance Company is not liable to pay the amount, such Insurance Company should satisfy the award by paying the amount to the claimant and recover the same from the owner of the vehicle as has been done by the Supreme Court in Baljit Kaur case.

11. Therefore, while upholding the contention of the Insurance Company that it is not liable to pay the amount on account of the death of a passenger travelling in a goods vehicle (other than the owner or the authorised representative of the owner accompanying the goods, which is now permitted under the amendment), we would follow the course adopted by the

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Division Bench IN 2006(1) MLJ 154 and the Supreme Court in (2004) 2 SCC 1 (cited supra) and direct the appellant to pay the amount to the claimants and recover the same subsequently from the owner. This can be done by the Insurance Company by initiating execution proceedings and it is not necessary for any further determination of the question. In other words, the owner is liable to pay the amount, but in order to facilitate the payment to the claimants, the Insurance Company is directed to pay the amount and recover the same from the owner and such direction can executed by the Insurance Company against the owner.

12. So far as the question of enhancement is concerned, such question arises because of the cross-objection filed by the claimants. However, in the peculiar facts and circumstances of the case, this cross-objection is not maintainable. From the factual narration, it is apparent that the Insurance Company has filed the appeal only challenging its liability to pay the compensation amount as according to the Insurance Company the deceased was unauthorisedly travelling in the goods vehicle as a passenger and, therefore, there was a statutory violation as well as violation of the conditions of the Insurance Policy. The cross-objection filed is essentially against the co-respondent, namely, the owner. The appeal filed by the Insurance Company is only confined to the question of its own liability. As already held the Insurance Company is not liable to pay the compensation amount and the entire amount is liable to be paid by the owner. It is thus apparent that the cross-objection is essentially against a co-respondent and the appellant has practically no concern with the result of such cross-objection. Such a Cross Objection would not be maintainable.

13. Learned counsel appearing for the claimants / respondents has however placed reliance upon a Division Bench decision of this Court in (2005) 1 M.L.J 20 (UNITED INDIA INSURANCE COMPANY LIMITED v. R. SATHIYANARAYANAN AND OTHERS) and contended that under certain circumstances a cross-objection against a co-respondent can be maintained and even compensation can be enhanced by applying the principle under Section 41 Rule 33 CPC.

14. In the said decision, the position has been summarised as follows :-

> "35. We would like to briefly summarise the conclusions from the above discussion:
>
> (1) Where the appeal is filed by the Insurance Company only on the ground envisaged under Section 149 of the Motor Vehicles Act, relating to liability of the insurer, and if by virtue of allowing the cross-objection, the additional liability has to be borne by the owner, namely, the co-respondent, such cross-

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objection may not be maintainable as such cross-objection would be effective against the co-respondent and not against the insurer/appellant.

(2) Where the Insurance Company files appeal challenging the award on merit, cross-objection can be maintainable, provided the ultimate liability in respect of enhanced compensation is to be borne by the Insurance Company and not by the owner/co-respondent and the fact that the appeal of the Insurer is liable to be dismissed on the ground that permission envisaged under Section 170 of the Motor Vehicles is not obtained, shall not stand in the way of the claimant-respondent in filing cross-objection.

(3) Even where the cross-objection is not filed, in appropriate case, the principle laid down under Order 41, Rule 33 of C.P.C can be invoked."

15. A reading of the aforesaid decision makes it clear that only where the liability of the Insurance Company is co-terminus with that of the owner, a cross-objection can be maintained, provided the appeal of the Insurance Company is also on all aspects, that is to say, on the question of quantum as well as on the question of liability of the Insurance Company. However, where the appeal of the Insurance Company is only confined to the question of its own liability, such cross-objection against a co-respondent would not be maintainable. As a matter of fact, a Division Bench of this Court in 1993 ACJ 486 (UNITED INDIA INSURANCE COMPANY LIMITED v. RAJAMMAL AND OTHERS), which had been specifically noticed in the above decision, has laid down such principle. Subsequently another Division Bench in 2004-4-L.W. 674 (BRANCH MANAGER, NEW INDIA ASSURANCE CO. LTD., v. SALAT MARY & OTHERS) has observed that where the appeal of the Insurance Company is confined to its liability, the cross-objection filed by the claimant against the owner being essentially a cross-objection against a co-respondent would not be maintainable.

16. In our opinion, there is no conflict between the observations made in 1993 ACJ 486, 2004-4-L.W. 674 on the one hand and 2005(1) M.L.J. 20 on the other hand. In 2005(1) MLJ 20 the liability of the Insurance Company was unlimited. It had filed the appeal challenging the quantum, even though it had not contested the proceedings on merit by seeking permission under Section 170 of the Motor Vehicles Act. In the appeal filed in the High Court, it had challenged the quantum and negligence as well as the question of its own liability. Only in the above context, it was held that the cross-objection filed by the claimants / respondents was maintainable as ultimately the liability of the Insurance Company was co-terminus with that of the owner. The aforesaid principle is not at all applicable to the facts of the present case. On the other hand, the ratio of the decision in 1993 ACJ 486 and 2004-4 L.W.674 are applicable to the present case.

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17. Therefore, the cross objection filed in the present case being essentially against the co-respondent and there being no common point to be agitated between the appellant and the co-respondent, such cross-objection is not maintainable. The aforesaid view is obviously is line with the decision of the Supreme Court in AIR 1963 SC 1516 (PANNA LAL v. STATE OF BOMBAY) and the Full Bench decision of the Madras High Court in AIR 1950 Madras 379 (VENKATESWARU v. RAMAMMA).

18. For the aforesaid reasons, we are unable to enhance the compensation. Even otherwise the fixation of compensation of Rs.66,000/- by the Claims Tribunal and confirmed by the learned single Judge cannot be characterised as grossly low, deserving any enhancement.

19. In the result, the appeal is allowed to the extent indicated. The appellant is to pay the compensation amount to the claimants/respondents 1 & 2 and thereafter recover the amount from the owner / Respondent No.3 by initiating appropriate execution proceedings. The cross-objection is dismissed. There would be no order as to costs.

dpk

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Principle Subordinate Judge,
Motor Accidents Claims Tribunal
Chengelpat

2. The Record Keeper,
VR Section, High Court, Madras.

+ 1 cc to Mr. T. Mohan, Advocate, SR No.46682

+ 1 cc to Mr. S. Manohar, Advocate, SR No.46313

JRG(CO)
SR/25.1.2007

COMMON JUDGMENT IN
LPA.NO.18/2003 & CROSS
OBJECTION SR.NO.66981 OF 2006

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